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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/748,411	12/29/2003	Paula M. Sosalla	19,682	7552
23556	7590	05/28/2009		
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EXAMINER				
HAND, MELANIE JO				
ART UNIT		PAPER NUMBER		
3761				
MAIL DATE		DELIVERY MODE		
05/28/2009		PAPER		

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte PAULA M. SOSALLA and LISA L. BUSHMAN

Appeal 2009-001834
Application 10/748,411
Technology Center 3700

Decided:¹ May 28, 2009

Before TONI R. SCHEINER, DONALD E. ADAMS, and
RICHARD M. LEOVITZ, *Administrative Patent Judges*.

LEOVITZ, *Administrative Patent Judge*.

DECISION ON APPEAL

¹ The two-month time period for filing an appeal or commencing a civil action, as provided for in 37 C.F.R. § 1.304, begins to run from the decided date shown on this page of the decision. The time period does not run from the Mail Date (paper delivery) or Notification Date (electronic delivery).

This is a decision on appeal from the Examiner's final rejection of claims 1-24. Jurisdiction for this appeal is under 35 U.S.C. § 6(b). The final rejection is affirmed.

STATEMENT OF THE CASE

The claims are directed to an absorbent article, such as training pants, comprising an interior active graphic disposed on an interior article surface. According to the Specification, an "active graphic" is an appearing or fading graphic that changes its appearance upon exposure to urine or other environmental stimuli (Spec. ¶ 49). Such graphics can be used to notify the wearer of the occurrence of urine in the article or to encourage the wearer to practice pulling the absorbent article up and down (*id.* at ¶ 5).

Claims 1-24 are pending and stand rejected by the Examiner as follows:

- Claims 1-9, 12, and 14-24 under 35 U.S.C. § 102(e) as anticipated by Erdman (U.S. Pub. Pat. App. No. 2004/0064113, filed Sep. 26, 2002 and published Apr. 1, 2004) (Ans. 3); and
- Claims 10, 11, and 13 under 35 U.S.C. § 103(a) as obvious in view of Erdman (Ans. 7).

Claim 1 is representative and reads as follows:

1. An absorbent article defining a longitudinal direction and a lateral direction, an interior article surface and an exterior article surface opposite said interior article surface, said article comprising:
 - an outercover defining an interior outercover surface, and an exterior outercover surface opposite said interior outercover surface;
 - an absorbent body disposed on said interior outercover surface; and

at least one interior graphic disposed on said interior article surface, wherein said at least one interior graphic is an active graphic.

CLAIM INTERPRETATION

Principles of Law

During patent examination, claims

are to be given their broadest reasonable interpretation consistent with the specification, and ... claim language should be read in light of the specification as it would be interpreted by one of ordinary skill in the art.” *In re Bond*, 910 F.2d 831, 833 (Fed.Cir.1990); *accord Bass*, 314 F.3d at 577 (“[T]he PTO must apply the broadest reasonable meaning to the claim language, taking into account any definitions presented in the specification.”); *In re Cortright*, 165 F.3d 1353, 1358 (Fed.Cir.1999) (“Although the PTO must give claims their broadest reasonable interpretation, this interpretation must be consistent with the one that those skilled in the art would reach.”); *Hyatt*, 211 F.3d at 1372.

In re American Academy Of Science Tech Center, 367 F.3d 1359, 1364 (Fed. Cir. 2004).

Analysis

Claim 1 is drawn to an absorbent article stated in the preamble to have “an interior article surface and an exterior article surface opposite said interior article surface.” The article comprises: 1) an outercover defining interior and exterior outercover surfaces; 2) an absorbent body disposed on the interior outercover surface; and 3) an interior graphic “disposed on said interior article surface.”

At issue in this Appeal is the meaning of “an interior article surface.” Thus, before the claim can be compared to the prior art, the words in the claim must be properly interpreted.

The claimed graphic is recited in the claim to be disposed on “said interior article surface.” “[A]n interior article surface” is said to be opposite an exterior article surface in the claim preamble,² but otherwise its position is not specified in the claim.

The terms “a” and “an” are indefinite articles customary interpreted to mean “at least one,” permitting the inclusion of additional elements not recited in the claim. *See KCJ Corp. v. Kinetic Concepts, Inc.*, 223 F.3d 1351, 1356 (Fed. Cir. 2000). Therefore, the phrase “an interior article surface” would be understood to mean that the claimed absorbent article has at least one interior article surface, but that the article can comprise additional interior article surfaces. This interpretation is wholly consistent with the Specification.

According to the Specification,

The bodyside liner 42 may be disposed toward the interior article surface 28; for example, at least a portion of the bodyside liner 42 may provide the interior article surface 28. In particular, the bodyside liner 42 may define an interior liner surface 94 and an exterior liner surface 96 opposite the interior liner surface; accordingly, the interior liner surface 94 may provide at least a portion of the interior article surface 28.

(Spec. ¶ 27; emphasis added.)

Thus, while the “interior liner surface” can provide “at least a portion of the interior article surface,” the Specification does not limit the location of the *interior article surface* to the *interior liner surface*. In other words, at least one “interior article surface” as recited in claim 1 can be the interior liner surface, but the article can comprise other interior article surfaces.

² Claim 1: “an interior article surface and an exterior article surface opposite said interior article surface.”

The ordinary meaning of the term “interior” is “being within; inside of anything; internal; inner; further toward a center.”³ An interior article surface would therefore be interpreted to read on any internal surface inside the claimed absorbent article. Consistent with this interpretation, the interior graphic – recited in claim 1 as disposed on “said interior article surface” – is described in the Specification as being placed on various internal surfaces of the absorbent article. This configuration is explained in more detail below:

1. Figure 5B, reproduced below, shows a partial section of an absorbent article. “The interior graphics . . . can be disposed on the liner 42, which includes either surface 94 or 96 of the liner, on the surface of the absorbent body 44 that faces the liner 42, or between the absorbent body 44 and the liner 42” (Spec. ¶ 47; *see also* ¶ 27).

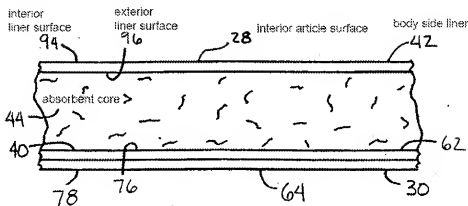


Figure 5B, above, shows a partial section of an absorbent article.

2. In addition, the Specification describes the graphic as alternatively “applied to a layer placed with or near the liner 42, such as on an interior graphic layer 98” (*id.* at ¶ 44; *see also* ¶ 48). Figure 5C, reproduced below, shows the interior graphic layer 98.

³ *The Random House College Dictionary* 695 (Rev. ed. 1975).

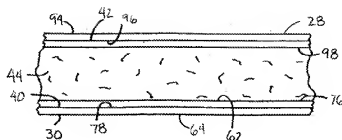


Figure 5C, above, shows a partial section of an absorbent article with the interior graphic layer beneath the liner 42, but internal to the absorbent article.

To sum it up, the phrase “[a]n interior article surface” as recited in claim 1 would be understood by persons of ordinary skill in the art having read the Specification (*In re American Academy Of Science Tech Center*, 367 F.3d at 1364) to mean at least one surface inside the claimed absorbent article upon which the interior graphic is placed.

ANTICIPATION BY ERDMAN

Claims 1-9, 12 and 14-24 stand rejected under 35 U.S.C. § 102(e) as anticipated by Erdman (Ans. 3).

Issue

Does Erdman describe the claimed absorbent article with “at least one interior graphic” disposed on an “interior article surface” of the absorbent article as recited in the properly interpreted claim 1?

Findings of Fact (“FF”)

1. Erdman describes an absorbent article, such as training pants for a child, that include wetness indicators *present* when an article is *dry* and which

disappear when wet (Erdman, ¶ 2). Additional indicators may be included that are *not present* when the article is *dry*, but appear when wetted (*id.*).

2. In one embodiment, Erdman describes an article with an absorbent core disposed between a top sheet (the article inner liner) and back sheet (the outer article backing) (Erdman, ¶ 13).

3. “Disposed on the absorbent core facing surface of the back sheet” is a graphic that indicates “when the absorbent article is insulted with” urine (Erdman, ¶ 13).

4. Erdman describes the graphic as disposed between the back sheet and absorbent core (Erdman, ¶ 14). The graphic can be “printed directly on a surface of the back sheet, or on an additional layer(s) and then disposed between the absorbent core and the back sheet” (*id.*; *see also* ¶ 34).

Analysis

The only issue in dispute in this rejection is whether the Erdman patent describes an absorbent article with at least one interior graphic disposed on an interior article surface as recited in claim 1.

Referring to paragraph 34 of Erdman, the Examiner contends that Erdman “teaches” that “graphics may be disposed anywhere in the instant absorbent garment, and printed on any portion thereof” it (Ans. 8; FF3 & 4).

Appellants contend: “The article can only have one interior surface” (Reply Br. 5). Appellants assert that the Examiner erred in finding “any surface that is not an exterior surface of the article must be the interior surface of the article” (*id.*). They explain that an absorbent article generally has three layers – a cover, absorbent, and liner – with a total of six surfaces

and that “[o]nly one of these six surfaces can be the interior surface of the article” (*id.* at 5-6). *See also* App. Br. 5-6.

Appellants interpret “an interior article surface” in claim 1 to be synonymous with the internal surface of a bodyside liner of an absorbent article. This interpretation is not the broadest reasonable interpretation that would be understood by persons of ordinary skill in the art in the context of the Specification. *In re American Academy Of Science Tech Center*, 367 F.3d at 1364. As discussed above, the ordinary meaning of the phrase “an interior article surface” is any surface “inside of” the absorbent article” (*see supra* at p. 6). Consistent with this interpretation is the statement in the Specification that the “interior liner surface” can provide “at least a portion of the interior article surface” (Spec. ¶ 47). That is, the *interior article surface* can be formed from other internal surfaces of the absorbent article, in addition to the interior liner surface. The Specification therefore does not describe the interior article surface as identical to the bodyside liner surface as Appellants argue it should be understood.

Furthermore, the Specification specifically states that the internal graphic can be disposed on other interior surfaces of the article (Spec. ¶¶ 27, 44, 47, & 48; *see supra* at pp. 5-6, reproduced Figures 5B and 5C). While it is improper to read limitations from the Specification into the claims, the Specification must be consulted when interpreting a claim.

Appellants are reminded that, during patent examination, claims are given their broadest reasonable interpretation, even when alternative interpretations are available. *In re Morris*, 127 F.3d 1048, 1056 (Fed. Cir. 1997). “Giving claims their broadest reasonable construction ‘serves the public interest by reducing the possibility that claims, finally allowed, will

be given broader scope than is justified” (internal citations omitted). *In re American Academy Of Science Tech Center*, 367 F.3d at 1364.

Appellants also argue that Erdman does not “disclose or enable how a graphic might be applied to an interior article surface, what inks or dyes might be used to avoid transfer to the wearer’s skin, etc.” (App. Br. 6).

To the contrary, Erdman provides specific disclosure on how graphics are imprinted on surfaces of the absorbent article (Erdman, ¶¶ 85 & 107-111). Appellants have not identified a deficiency in Erdman’s teachings, but rather make broad, factually unsupported allegations. “[A]rguments of counsel cannot take the place of evidence lacking in the record.” *Estee Lauder Inc. v. L’Oreal, S.A.*, 129 F.3d 588, 595 (Fed. Cir. 1997) (quoting *Knorr v. Pearson*, 671 F.2d 1368, 1373 (CCPA 1982).

OBVIOUSNESS OVER ERDMAN

Claims 10, 11 and 13 stand rejected under 35 U.S.C. § 103(a) as obvious in view of Erdman (Ans. 7).

Based on specific factual findings, the Examiner reasoned that the subject matter of claims 10, 11 and 13 would have been obvious to persons of ordinary skill in the art (Ans. 7-8). As Appellants do not identify any defect in the Examiner’s reasoning, and we find none, we affirm the rejection of these claims for the reasons stated by the Examiner.

CONCLUSIONS OF LAW

Erdman describes an absorbent article with “at least one interior graphic” disposed on an “interior article surface” of the absorbent article as recited in the properly interpreted claim 1.

The rejection of claim 1 is affirmed. Claims 2-9, 12 and 14-24 fall with claim 1 because separate reasons for their patentability were not provided. *See* 37 C.F.R. § 41.37(c)(1)(vii).

The rejection of claims 10, 11 and 13 is affirmed.

TIME PERIOD FOR RESPONSE

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a).

AFFIRMED

cdc

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NEENAH WI 54956

<i>Notice of References Cited</i>				Application/Control No.		Applicant(s)/Patent Under			
				10/748,411		Reexamination			
				Examiner		Art Unit			
				Melanie Hand		3700			
U.S. PATENT DOCUMENTS									
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*A copy of this reference is not being furnished with this Office action. (See Manual of Patent Examining Procedure, Section 707.05(a).)

**APS encompasses any electronic search i.e. text, image, and Commercial Databases.

U.S. Patent and Trademark Office

PTO-892 (Rev. 03-98)

Notice of References Cited

Part of Paper No. 16

**The
Random House
College
Dictionary**
REVISED EDITION

Based on **The
Random House
Dictionary of the
English Language**
THE UNABRIDGED EDITION
JESS STEIN • EDITOR IN CHIEF

TABLE OF CONTENTS

<i>Prefaces</i>	v
<i>Editorial Staff</i>	vi
<i>Consultant Staff</i>	vii
<i>Indo-European Language Chart</i>	x
<i>Historical Sketch of the English Language</i>	xi
<i>Etymology Key</i>	xv
<i>Pronunciation Key</i>	xvi
<i>Pronunciation of English</i>	xvii
<i>Usage, Dialects, and Functional Varieties</i>	xix
<i>Guide to the Dictionary</i>	xxii
<i>Table of English Sounds and Their Common Spellings</i>	xxxii

A DICTIONARY OF THE ENGLISH LANGUAGE 1

<i>Signs and Symbols</i>	1535
<i>United States Colleges and Universities</i>	1539
<i>Canadian Colleges and Universities</i>	1551
<i>English Given Names</i>	1552
<i>Basic Manual of Style</i>	1559

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LIBRARY OF CONGRESS CATALOGING IN PUBLICATION DATA

Main entry under title:

The Random House college dictionary.

Based on the Random House dictionary of the English language, unabridged ed.

Published in 1968 under title: *The Random House dictionary of the English language, college ed.*

1. English language—Dictionaries.

PE1625.R34 1975 423 75-4858 ISBN 0-394-41500-1

ISBN 0-394-43600-8 thumb-indexed ed..

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Manufactured in the United States of America

